

Arguments concerning the NEW-BUILDINGS in the Parishes within the Weekly Bills of Mortality, without the City of LONDON.

Because the increase of New-Buildings hath of late occasion'd much Clamour, and seeing some Men endeavour by mistaken Suggestions to induce others to believe, That such Buildings are erected against Law, and are a publick Nuisance; or if not so, that yet the Builders and Owners thereof (having as they supposed) made great advantages to themselves by such Buildings; therefore, they would have it thought reasonable, that a particular Tax of half a Years value, according to the improv'd Rent, should be impos'd upon them towards the publick Charge: imagining that the same will amount unto a vast Sum: Wherefore, for the prevention of a thing so unequal, and destructive to many particular Persons, and so little advantageous to the present Designe; it may be reasonable to shew the Mistakes and Errors of such Persons, and that these Buildings are not against any Law whatsoever, or any Publick Nuisance, nor so advantageous to the Builders and Owners, as is imagined.

I. The Common Law favours much the Increase of buildings, being for the Habitations of Men, and gives the Preheminence to Land builded before other Land, *Co. Litt. f. 4. a*: And the Supportation and Increase of Buildings in the Judgement of Law, was, and is esteemed a Melioration; and for the benefit of the Publick, and no Nuisance, (according to that dangerous and unintelligible Opinion of some Men;) for a publick Nuisance is properly *malum in se*, and cannot be so by accident; and what is not a Crime originally in it self, can no more become one by Inferences or Consequences, than the Accumulation of Things can alter the Nature of Things: And it may be very inconvenient to make a Constructive or State-Nuisance: But if the Parliament shall observe any growing Mischief, or Inconvenience, it may be proper to provide against them such preventing Laws, as they in their Prudence shall judge meet; but to punish Men by a Law *Posterior* to the Fact, must needs be unreasonable: For *Ubi non est Lex ibi non est transgressio*. And it is the Birth-right of every *English-man*, not to be punished, but by the known Laws of the Land; by the which, those who are concern'd in New-buildings, are willing to stand and fall; and it is an injury to them, to suggest the contrary.

II. If these buildings were publick Nuisances, any person might justifie to abate them: neither could any Land-Lords of them, have any remedies for their rents or covenants, which were a thing unreasonable to imagine, and Contrary to all practice and experience.

III. There is no *malum prohibitum*, for the first Statute Law, which restrains any Buildings, is the 31 *Eliz. cap. 7.* concerning Cottages, made only to prevent poor Cottages in the Country, the usual receptacles of idle, and beggary people: But left other Houses within Cities, or ancient Burroughs, &c. should by a strain'd construction be brought within the compass of that Law; there is an express *Proviso* to exempt them; and so it was lately declar'd by the Lord Chief Justice *Hales*, upon a Tryal before him in the case of one *Partridge*, for a House built near *Hide-Park*, within the City and Liberty of *Westminster*; for without an Act of Parliament, Cottages could not have been restrain'd, neither was this a retrospective Law, *Co. 3d. Instit. f. 204.*

IV. The next prohibitory Law was the 35 of *Eliz. cap. 6.* which Law restrain'd only the erecting of small Houses, in and within three Miles of *London*, as fit only to receive poor People, and Vagrants; and not any Buildings for the enlargement of any House, or necessary for the Convenience, or Pleasure of the Inhabitants; nor the Erection of any Houses, fit for the Habitation of such, who were or might be Subsidy-men; for, it would be very strange, if Noblemen and Gentlemen might not Build Houses for their Habitations, which are Ornaments to the place, as the Square in *St. James's-Fields*, *Southampton-Buildings*, and other places, built by Vertue of His Majesties Letters Patents, and the Express Contrivance of his Officers. And it would be very hard, if the Able and Wealthy Trades men, might not erect Houses for their Trades and Accommodations; and who so considers aright, will find the increase of Buildings in the Out-parts of the City, to depend upon various Circumstances; as the increase of Trade, the great and constant Concourse of the Nobility and Gentry to the Parliament, the Burning of *London*, His Majesties Proclamations to invite Forreigners, and other secret Causes: But this Act of the 35th. of *Eliz.* had no Retrospection, and was only Temporary, and being thought inconvenient, was not continued; and serv'd only to give a colour for some Proceedings against New-Buildings, by such who did not well observe the Expiration of it; which was the Restitution of the Common-Law, the best Rule for the Determination of all Offences, and all Men's Rights and Properties, *Co. 3d. Instit. 204.*

V. After the Expiration of this Law, there were Proclamations against some sort of Buidings, in and about *London*; but never any general Prohibition or Retrospection in them; but these Proclamations being complained against, as an Invasion upon the Common Law, and the Rights of the Subjects, the matter was referred about the Eighth of King *James*, to the then two Chief Justices, and others; and upon mature consideration thereof, and upon Conference with the Lords of the Privy Council; it was agreed, That the King by His Proclamation could not make that an Offence, which was not so before; nor alter any part of the Common Law, and they agreed the Rule before mentioned, *Ubi est nulla lex, ibi est nulla transgressio*; which seems to be a full Resolution, that *New Buildings* in or about *London*, was no Offence, *Co. 12. Rep. f. 74.*

VI. In the Year Fifty six, in the time of the Usurper *Oliver*, there was an Imposition of a Years value laid upon all Buildings, upon New Foundations, within ten Miles of the Walls of *London*: But what great difficulty there was in raising that Money, (though the Act was carefully Penned) How many infinite perplext Cases did arise, what great clamor it occasioned by the ruine of many particular persons, what time it required before the several and respective interests were adjusted, how little Money it brought in (though it had a retrospection of Thirty six Years, and an extent of ten Miles every way from the Walls of *London*;) and how long time that little Money was a raising, and what immediately followed upon that imposition, is very well known.

VII. Since His Majesties Restauration, there was an Act made by this Parliament in the Thirteenth and Fourteenth of His Majesties Reign, which prohibits all Timber, and other irregular Buildings in and about *London*, with a punishment upon the Offenders, which by an easie Implication seems to give a Toleration to others: But what is more observable, is, that immediately after the Burning of *London*, when their members brought in a Bill for the Re-building the said City, with an enacting clause to restrain other Builders in and about the Suburbs, but for five or seven years; it is well known that the clause was rejected, as a thing prejudicial to mens properties; and though other applications of that kind have been made to the Parliament, they have still been without effect: So that these Buildings seem rather encouraged even by this Parliament, then otherwise.

VIII. It is apparent, That such an Imposition would be against all Parliamentary proceedings, for, there nothing is more Consonant to right Reason and natural Equity, then that publick Charges should be born by publick Contributions, according to the Universal Rule, *Communia pericula requirunt Communia auxilia*, and not to be imposed upon particular persons, to the ruine of some few, and little advantage to the whole. *Co. 4. Instit. f. 28.*

IX. Such new invented impositions have always occasion'd great discontentments and disturbance, and caused inbred hatred and malice, whereas the usual Taxes which include all, (though heavy) are born with great peace and quietness, *Co. 4. Instit. f. 28.*

X. It is the Law of Parliament, that Taxes should be out of the sparable parts of mens estates, and it will be a dangerous president, to alter such a fundamental Constitution, by suffering innovations, in Taxing a few persons to half a years value so their revenues, which will be the infallible Ruine of many Persons, Widows and Orphans; and the Consequence of it, will be terrible to all people, who will always remain under an apprehension, that hereafter a particular Tax, may be impos'd upon them, that others may be spar'd; and that without the transgression of any Law.

XI. To impose any Fine upon them, is Derogatory to many of his Majesties Grants; by vertue of which, (as hath been said) most of the Builders have been encourag'd, and many of them built upon the Kings inheritance, whereby great improvements do, and may accrew to the Crown; and it would be very strange, that improvements upon the Kings Land, should be a Crime.

Lastly. Whereas it is Surmis'd, that the Builders and Owners of such Buildings have made great advantage by them; the contrary to which, may easily appear by their great poverty: Many of them being now in a Jayl: Others of them being poor Seamen, VWatermen, VWeavers, Labourers, &c. and such Trades-men, who being burnt out of *London*, and not able to build there, were forc'd to build in the Subburbs, and have thereby exhausted their estates; and the inhabitants of *Middlesex*, within the weekly bills of Mortality, have had very great sums of money monthly impos'd upon them, by this very Parliament, for and in respect of new buildings. And admitting, it were true, that some Builders have made great benefit by these Buildings, yet it cannot be imagin'd, that such who have purchased the same upon valuable considerations, can have made any advantages thereby. And further, it is almost impossible, to apprehend what great difficulties, and perplexities will arise upon the apportionment of such a Tax, what great delay and trouble there will be in the discovery of what Buildings are upon new Foundations, what not; what great inequality and partiality there will be in ascertaining the several and respective Interests; what Injustice it shall be to all Purchasers, who have made their Purchases according to the known Laws; what perpetual discention it will breed betwixt Landlord and Tenant, Father and Son, where any Settlement of Marriages have been made. In short, it may serve to enrich a few Commissioners, Registers, Clerks, Surveyors, and such like Officers, by the Impoverishing of others: But it can never bring any considerable sum to the Publick; and the best means for the discovery thereof, will be to have recourse to the proceedings upon the Tax impos'd 1656.